



Mr John McGuinness TD  
Chairman of the Public Accounts Committee  
Leinster House  
Dublin 2

28th September 2011

Dear Chairman

## Mazars Investigation into Matters Raised under the FÁS Grievance Procedure

I am writing to you on foot of your recent Committee discussions regarding an investigation conducted by Mazars into matters raised under the FÁS Grievance Procedure and a subsequent request by the Director General of FÁS of 21<sup>st</sup> September 2011 made to me to contact 4 individuals complained against as part of this process against whom we upheld complaints.

### 1. Background to Mazars Investigation Report

By way of background to our report, on foot of a tender issued in March 2009, Mazars were placed on a panel for services in relation to a "Framework for the Provision of Services to Investigate Complaints of Bullying and Harassment on behalf of FÁS". We were engaged by FÁS in 2010 to undertake an independent investigation into a number of grievances made by a member of its senior management team based in its Head Office, Dublin. The grievances were made under the FÁS Grievance Procedure.

The terms of reference under which this investigation was conducted and which were provided by FÁS at the outset of the process were as follows:

- To investigate the grievances as set out by the complainant as defined in the Final Statement of Complaint
- To determine findings
- To prepare and present an anonymised report including findings to the Director General of FÁS

A total of 24 specific grievances were made against 17 individuals who worked or continue to work for or on behalf of FÁS in their capacity as officers of the Organisation or as agents of FÁS.

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CONSULTANTS: BRIAN P. MURPHY

MAZARS IN IRELAND IS A MEMBER FIRM OF MAZARS, AN INTERNATIONAL ADVISORY AND ACCOUNTING GROUP VAT NO. IE 9526808M



## 2. Investigation Approach

The investigation was conducted under the FÁS Grievance Procedure but also under the FÁS Dignity of Work Policy, a number of other policies issued by FÁS and relevant legislation.

At the outset of the process, Mazars, FÁS and the complainant agreed a formal written approach over the course of a number of months to guide the conduct of the investigation. This approach was accepted by all parties, reflects best practice in HR, the conduct of investigations of this nature and included the following provisions:

### Exchange and Disclosure of Information

- *In consideration of the exchange and disclosure of information, Mazars undertakes in relation to all information related to this investigation:*
  - *to maintain the information confidential and to use the information exclusively for the investigation and for no other purpose;*
  - *not to copy, reproduce or reduce to writing any part of the information except as may be reasonably necessary for the investigation;*
  - *not to use, reproduce, transform or store any of the information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;*
  - *to comply with the Data Protection Acts 1988 and 2003 (hereinafter collectively referred to as "Data Protection Acts") and not to do or permit anything to be done which might cause or otherwise result in a breach of the Data Protection Acts; and*
  - *Consistent with our policies on document retention, Mazars may be required to retain information, meeting notes and working papers collected and produced for the Investigation, on the condition that any confidential information retained by the Firm has restricted access to the Mazars investigation team only and is secured electronically in accordance with our Data Handling Policy;*
  - *Mazars shall destroy all source information, documents, memoranda, notes, and any and all other records whatsoever prepared by FÁS and the complainant except to the extent that the Firm is required to retain any such confidential information in working paper format by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body*
  - *Any documentation relating to this investigation cannot be used for other purposes or other investigations*

### Restrictions of Use

- *The Investigation Report should not be quoted, referred to or shown to any other parties unless so required by Court Order without the prior consent in writing of Mazars, the complainant and the Director General*
- *Should the Investigation Report or any working papers be quoted, referred to or shown to any other parties without a Court Order or the prior consent in writing of Mazars, the complainant and the Director General, Mazars will not accept liability for any loss, damage,*



- claim, demand, action, costs, charges and other liabilities arising from the use of the information contained in the Investigation Report and documents which may accompany it.*
- *It should be noted that the provision of working papers and meeting notes do not constitute part of the terms of reference of the Investigation and will not be disseminated, published or circulated.*
  - *In line with the FÁS policy on Dignity at Work "The person(s) making the complaint, the person(s) against whom the complaint is made, the Support contact person(s), mediator(s), investigators and witnesses will treat any information they obtain arising from any procedure under this policy in the strictest of confidence. A breach of this requirement may be dealt with under the FÁS Disciplinary Policy*

The provisions outlined above were agreed in writing by the Complainant, Mazars and FÁS on 13<sup>th</sup> May 2010 and formal commitments in writing were provided to each of the 17 individuals who were called to participate.

The investigation approach also provided that the Mazars investigation team would conduct a walkthrough of the final report (including named individuals) with both the Director General and the Complainant should they so wish.

The above assurances were required in order to ensure fair treatment of both the Complainant and those complained against and in order to secure the participation of those required to conduct the investigation as is best practice in the conduct of a HR investigation.

### **3. Investigation Conclusion**

We conducted in excess of 50 meetings and reviewed a significant volume of documentation over a 7 month period in order to allow us to reach our conclusions. These conclusions were reached in the specific context of the grievances raised – i.e. in so far as they related to the Complainant only. We did not examine any of the evidence provided to us from any other perspective.

These conclusions were provided to FÁS in the form of a full copy of the final report on 8<sup>th</sup> December 2010 (anonymised) and prior to that a walkthrough of the final report on 6<sup>th</sup> December (including named individuals) with the Director General. However he has not been provided, as was agreed at the outset of the process, with any details from our working papers which underpin these conclusions as is standard practice in an investigation of this nature.

Simultaneous to this process, each individual complained against was provided with our conclusions in so far as they related to the complaints made against them but again not with any details from our working papers which underpin these conclusions as is standard practice in an investigation of this nature.

#### 4. Specific Factual Inaccuracies

We upheld a complaint made against 4 individuals under the following grievance raised by the Complainant:

*"From January 2008 through to the 16<sup>th</sup> October 2009, FÁS senior management provided information relating to the Complainant that was factually inaccurate to the Public Accounts Committee causing damages to the Complainants professional reputation"* (emphasis ours)

The complaint specifically included the following 5 PAC meetings held in 2008:

- Public Accounts Committee Meeting – 2<sup>nd</sup> October 2008
- Public Accounts Committee Meeting – 6<sup>th</sup> November 2008
- Public Accounts Committee Meeting – 27<sup>th</sup> November 2008
- Public Accounts Committee Meeting – 4<sup>th</sup> December 2008
- Public Accounts Committee Meeting – 18<sup>th</sup> December 2008

As was represented in last week's PAC meeting, we concluded that in the case of 20 statements (18 fully and 2 partially) we could *"uphold the grievance against 4 individuals named in their capacity as officers of FÁS"*

In addition, our report provided some context or background to upholding the grievance as follows:

*"It is clear that the factual inaccuracies noted are largely because of:*

- *Member of the FÁS delegation responding to queries based on information which they had heard or received verbally without seeking to satisfy themselves as to the veracity of the information in all cases*
- *Lack of preparation for PAC meetings due to the environment in which FÁS was operating in the period in which the PAC meetings were held and the fact that certain PAC meetings had not originally been convened to address the matters which they ultimately discussed*
- *The length of time which had elapsed between the events on which they were questioned and the PAC meetings*
- *The fact that some of those who attended these meetings had retired in the interim or no longer occupied the positions which they had previously held and as such did not have access to FÁS records*
- *Lack of understanding of FÁS procedures"*

We also noted that *"On the basis of our rational analysis of the factual inaccuracies noted, we concluded that in a small number of cases (less than half of those noted) the responses given may have contributed to impressions which those reading the PAC transcripts or attending the hearings may have formed in relation to the Complainant. However we conclude that given the nature of the factual inaccuracies involved, they would not, on their own, if taken in isolation have damaged the Complainants professional reputation"*.



## **5. Matters for the Attention of the PAC**

We would like to draw the attention of the Committee members to the fact that the complaints which we upheld regarding factual accuracy were only examined in so far as the professional reputation of the Complainant was concerned and we did not seek to examine any statements made to the PAC from any other perspective.

It should also be noted that our report did not state that inaccurate evidence given by FÁS officers in 2008 had resulted in the Committee being misled as has been suggested in some media reports.

It is our opinion that a review of the transcripts from each of the 5 PAC meetings in question would be unlikely to identify the specific factual inaccuracies in question. Our conclusions were reached on the basis of an extensive review of transcripts from these meetings, verbal evidence provided over the course of the investigation, the review of several thousand pages of submissions provided to us, third party evidence where it was available and our professional judgement.

Whilst we cannot presume to advise the Committee or to have examined these matters from a similar perspective to that of the Committee members, we would like to bring your attention to the fact that our investigation and the complaints raised therein focused solely on the professional reputation of the Complainant and did not seek to examine statements made by FÁS officers to the PAC from any other perspective.

## **6. Request from the Director General of FÁS**

On 21<sup>st</sup> September 2011, I received a request from the Director General of FÁS to contact the 4 people, against whom we upheld the complaint outlined above in our Investigation Report of December 2010.

Having carefully considered the matter and following legal advice, we are not in a position to agree to his request. This is based on the following:

- Our view that the details underpinning the conclusions reached in our report were conveyed to us in confidence and under the express assurance that they would not be used for purposes outside that of the specific HR investigation. We do not believe that we can revisit those confidences conveyed to us
- The fact that if we seek the permission of the 4 individuals in question, we believe that this would represent a breach of the agreement made with the Complainant and those complained against because of the fact that certain conclusions rely on evidence given by individuals other than the 4 people in question
- Our opinion that seeking consent from the 4 individuals in question would undo the basis of the whole report
- In the event that certain of the 4 individuals in question provide consent and others do not we believe that this might be interpreted as prejudicial to those who declined to consent and again would represent a breach of the assurances which we provided to them

- Any breach of the details conveyed to us in confidence would, we believe set a precedent for future investigations conducted under the FÁS grievance procedures and for all such investigations in other publicly funded bodies and would restrict the ability of organisations to secure the participation of staff/ third parties in any HR investigation of this nature

We are however very conscious of the role of the Public Accounts Committee and we are anxious to support the Committee in further exploring this matter. In that context I have written to the Director General of FÁS and to the Complainant requesting their permission, as is required under the terms of our investigation, to provide you with the relevant subsection (Section 1.6) of the report, to allow the Committee members to consider this matter more fully. They have both provided me with their permission and I enclose a copy of Section 1.6 of our report.

## 7. Mazars Fees

A query was raised by the Committee on 22<sup>nd</sup> September in relation to fees paid to Mazars for the conduct of the investigation process and the production of the investigation report. In order to clarify this matter:

- At the date of writing the total value of fees invoiced to FÁS is €181,886 (excluding VAT) relating to this investigation
- Solicitors fees of €25,000 were also incurred (excluding VAT) in the investigation and have been paid by FÁS

I trust that the details in this letter will provide you and the members of the Committee with enough additional information to allow you to complete your enquiries and we would be happy to assist you in whatever other way we can in this matter within the confines of the commitments which we have made and the duty of care which we owe to those who participated in the investigation process.

Yours sincerely



Dera McLoughlin  
Partner  
Mazars

cc: Paul O'Toole – Director General, FAS